

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA)

)

Plaintiff)

) Civil Action No.02- 2303

v.)

)

MANUEL R. LAGMAY)

)

Defendant.)

ANSWER TO AMENDED COMPLAINT

Defendant, Manuel R. Lagmay, by the undersigned counsel states the following in answer to Plaintiff's Amended Complaint:

1. Defendant admits the allegations of Paragraphs 1 through 6 of Plaintiff's Amended Complaint

ANSWER TO PLAINTIFF'S COUNT 1

2. In response to paragraph 7 of Plaintiff's Amended Complaint, Defendant incorporates his answers to the allegations contained in paragraphs 1 through 6 of Plaintiff's Complaint.

3. In response to paragraph 8 of Plaintiff's Amended Complaint, Defendant admits that the assessment was made as alleged but denies that the assessment was correct.

4. Defendant denies the allegations of Paragraphs 9 and 11of Plaintiff's Amended Complaint

5. In response to paragraph 10 of Plaintiff's Amended Complaint, Defendant admits that he did not pay the assessment and denies the remaining allegations of said paragraph 10.

ANSWER TO PLAINTIFF'S COUNT 2

6. In response to paragraph 12 of Plaintiff's Amended Complaint, Defendant incorporates his answers to the allegations contained in paragraphs 1 through 11 of Plaintiff's Complaint.

7. In response to paragraph 13 of Plaintiff's Amended Complaint, Defendant admits that the assessment was made as alleged but denies that the assessment was correct.

8. Defendant lacks sufficient information to admit or deny the truth of the allegations of paragraph No. 14 of Plaintiff's Amended Complaint.

9. In response to paragraph 15 of Plaintiff's Amended Complaint, Defendant admits he

has not fully paid the assessments and denies the remaining allegations of Paragraph 15.

10. In response to paragraph 16 of Plaintiff's Amended Complaint, Defendant admits the existence of a lien but denies that the amount of the lien is correct.

AFFIRMATIVE DEFENSES

In further answer to Plaintiff's Amended Complaint, Defendant asserts the following affirmative defenses:

1. The assessment on which Count 1 of the Amended Complaint is based is invalid, having been made in violation of the restrictions on assessment contained in 26 U.S.C. Section 6213(a).
2. The assessment on which Count 1 of the Amended Complaint is based incorrect as it is not based on the Defendant's actual income, deductions from income, and credits against income tax for the years at issue.
3. Defendant has made payments or is entitled to setoffs in excess of the amounts credited by the Plaintiff.
4. As to Count 2 of the Amended Complaint, payments of the Form 941 taxes on which the assessment is based have not been properly credited.
5. As to Count 2 of the Amended Complaint, payments of related assessments which reduce the amount properly due from Defendant have not been properly credited.
6. The suit is barred by the applicable statute of limitations.

WHEREFORE, having fully answered Plaintiff's Amended Complaint, Defendant Manuel R. Lagmay respectfully requests that the Court dismiss the Complaint and grant him any other relief to which he shows himself entitled.

MANUEL R. LAGMAY

By: /s/ Michael F. Callahan
Michael F. Callahan
THYDEN, GROSS & CALLAHAN
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CERTIFICATE OF MAILING

I hereby certify that on August 30, 2004, I emailed a copy of the foregoing Answer to Plaintiff's counsel of record as follows:

Jonathan D. Carroll, Esquire
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 227, Ben Franklin Station
Washington, DC 20044
email: Jonathan.D.Carroll@usdoj.gov

/s/ Michael F. Callahan
Michael F. Callahan